



## Designations Reformat

LSA Document #07-308

### Overview

This rulemaking reformat 326 IAC 1-4-1, Designations, from an incorporation by reference form to a full text incorporation in table format, adding new rule sections for each of the 92 counties in Indiana. This rule also includes the redesignation of Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties as attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS).

### Citations Affected

Amends 326 IAC 1-4-1 concerning designations. Adds 326 IAC 1-4-2, 326 IAC 1-4-3, 326 IAC 1-4-4, 326 IAC 1-4-5, 326 IAC 1-4-6, 326 IAC 1-4-7, 326 IAC 1-4-8, 326 IAC 1-4-9, 326 IAC 1-4-10, 326 IAC 1-4-11, 326 IAC 1-4-12, 326 IAC 1-4-13, 326 IAC 1-4-14, 326 IAC 1-4-15, 326 IAC 1-4-16, 326 IAC 1-4-17, 326 IAC 1-4-18, 326 IAC 1-4-19, 326 IAC 1-4-20, 326 IAC 1-4-21, 326 IAC 1-4-22, 326 IAC 1-4-23, 326 IAC 1-4-24, 326 IAC 1-4-25, 326 IAC 1-4-26, 326 IAC 1-4-27, 326 IAC 1-4-28, 326 IAC 1-4-29, 326 IAC 1-4-30, 326 IAC 1-4-31, 326 IAC 1-4-32, 326 IAC 1-4-33, 326 IAC 1-4-34, 326 IAC 1-4-35, 326 IAC 1-4-36, 326 IAC 1-4-37, 326 IAC 1-4-38, 326 IAC 1-4-39, 326 IAC 1-4-40, 326 IAC 1-4-41, 326 IAC 1-4-42, 326 IAC 1-4-43, 326 IAC 1-4-44, 326 IAC 1-4-45, 326 IAC 1-4-46, 326 IAC 1-4-47, 326 IAC 1-4-48, 326 IAC 1-4-49, 326 IAC 1-4-50, 326 IAC 1-4-51, 326 IAC 1-4-52, 326 IAC 1-4-53, 326 IAC 1-4-54, 326 IAC 1-4-55, 326 IAC 1-4-56, 326 IAC 1-4-57, 326 IAC 1-4-58, 326 IAC 1-4-59, 326 IAC 1-4-60, 326 IAC 1-4-61, 326 IAC 1-4-62, 326 IAC 1-4-63, 326 IAC 1-4-64, 326 IAC 1-4-65, 326 IAC 1-4-66, 326 IAC 1-4-67, 326 IAC 1-4-68, 326 IAC 1-4-69, 326 IAC 1-4-70, 326 IAC 1-4-71, 326 IAC 1-4-72, 326 IAC 1-4-73, 326 IAC 1-4-74, 326 IAC 1-4-75, 326 IAC 1-4-76, 326 IAC 1-4-77, 326 IAC 1-4-78, 326 IAC 1-4-79, 326 IAC 1-4-80, 326 IAC 1-4-81, 326 IAC 1-4-82, 326 IAC 1-4-83, 326 IAC 1-4-84, 326 IAC 1-4-85, 326 IAC 1-4-86, 326 IAC 1-4-87, 326 IAC 1-4-88, 326 IAC 1-4-89, 326 IAC 1-4-90, 326 IAC 1-4-91, 326 IAC 1-4-92, and 326 IAC 1-4-93 concerning specific county designations. Effective 30 days after filing with the Publisher.

### Affected Persons

This rule affects all citizens of the State of Indiana by providing a convenient source of information on the attainment status of every Indiana county for each of the criteria pollutants. The 8-hour ozone redesignations affect any existing major source that is interested in expansion and potential new businesses considering locating in Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties, and the citizens of these counties.

### Reasons for the Rule

This rule is a state initiative to provide a mechanism for faster incorporation of federal redesignations so air pollution permits can be issued more quickly and under less restrictive attainment area standards. Incorporation of the federal redesignations into the state rule will enable sources in Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties that emit significant levels of certain pollutants to be permitted under the Prevention of Significant Deterioration (PSD) rules. Until the state rulemaking is effective, sources in these counties will continue to be subject to the state's nonattainment rules, including the permitting rules.

### Economic Impact of the Rule

This rulemaking will have no fiscal impact upon the affected entities because there are no substantive amendments, only a reformat of existing rule text and incorporation by reference of redesignation to attainment of specific counties.

### Benefits of the Rule

This rule will allow IDEM to initiate a rulemaking to reflect the new redesignation status to attainment at the same time that IDEM submits a request for redesignation for a particular criteria pollutant to U.S. EPA, reducing the time it takes to incorporate redesignations into state rule, and allowing pending air pollution permits to be issued quicker and under less restrictive attainment area standards.

Redesignation of Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties to attainment for the 8-hour ozone standard properly informs the public that their air meets health-based air quality standards and

allows air permits for the applicable emissions in these counties to be issued under the PSD program, rather than the emission offset program.

## **Description of the Rulemaking Project**

### **Rule Reformatting**

IC 13-17-14 authorizes the air pollution control board (board) to adopt rules that classify regions into attainment and nonattainment areas for regulated air pollutants based on scientific study of geographical, topographical, and meteorological data and to set standards for ambient air quality for each region to effectuate the purposes of air pollution control laws.

Title 40 Code of Federal Regulations (CFR) Part 81.315 contains the attainment status designations applicable to Indiana as approved or designated by the United States Environmental Protection Agency (U.S. EPA) under Section 107 of the Clean Air Act. The attainment status designations traditionally have been incorporated by reference into Indiana's rules at 326 IAC 1-4-1 and amended whenever U.S. EPA approves a redesignation request from nonattainment to attainment.

The purpose of this rulemaking is to reformat 326 IAC 1-4, Designations, from its incorporation by reference form to a full text incorporation in table format, adding new rule sections for each of the 92 counties. Currently, a rulemaking to change an attainment status designation cannot be initiated until U.S. EPA publishes its final approval of a request for redesignation in the Federal Register. The proposed change to the format of the rule will allow IDEM to initiate a rulemaking to reflect the new redesignation status to attainment at the same time that IDEM submits a request for redesignation for a particular criteria pollutant to U.S. EPA. The gap in time between U.S. EPA's approval of a redesignation request and the subsequent incorporation of that approval into 326 IAC 1-4 will be greatly decreased, allowing pending air pollution permits to be issued quicker and under less restrictive attainment area standards.

The draft rule is organized by county rather than by pollutant for the following criteria pollutants: sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), ozone (O<sub>3</sub>), particulate matter (PM<sub>10</sub>), nitrogen oxides (NO<sub>2</sub>), and lead (Pb). PM<sub>2.5</sub> designations will be added in a separate rulemaking.

### **Ozone Redesignation**

On April 30, 2004, U.S. EPA published nonattainment designations for 24 Indiana counties, entirely or in part, for the 8-hour ozone NAAQS (69 FR 23858). The standard is set at 0.08 parts per million (ppm). Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties were designated as basic nonattainment for the standard. These designations

require Indiana to develop a plan to reduce volatile organic compound (VOC) and oxides of nitrogen (NO<sub>x</sub>) emissions and make a demonstration that the areas will meet the 8-hour ozone NAAQS by June 15, 2009.

Ozone monitoring data and photochemical modeling analyses demonstrate that air quality has met the NAAQS for ozone in Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties in advance of the development of an attainment plan. Air quality in these areas has improved largely as a result of regional NO<sub>x</sub> reductions from power plants implemented in 2004. As a result, U.S. EPA redesignated these counties to attainment for the 8-hour ozone standard on July 19, 2007 (72 FR 39573, 72 FR 39576, and 72 FR 39579).

Indiana has submitted redesignation requests for Lake County and Porter County on September 12, 2006, and for the Central Indiana counties of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby, on March 26, 2007. IDEM will initiate a separate rulemaking at a future date for these areas after they are redesignated to attainment for the 8-hour ozone standard by U.S. EPA.

IDEM also proposes to remove 326 IAC 1-4-1(b) because it is no longer needed. This provision was added with the 8-hour ozone nonattainment designations to ensure that permit applications that had been submitted to IDEM, but not issued before the 8-hour ozone designations became effective, were issued under the nonattainment rules in accordance with federal requirements. Because all permit applications submitted prior to the 8-hour ozone nonattainment designations have been acted upon, the provision is no longer necessary.

Adoption of the federal redesignations for these counties will not have a substantive effect on the scope or intended application of the federal rules. IDEM conducted public hearings for Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties as required by Section 100(a)(2) of the Clean Air Act to ensure proper public participation.

This rulemaking will incorporate into state rules the final federal approval for redesignating Clark, Elkhart, Floyd, LaPorte, and St. Joseph counties to attainment for the 8-hour ozone NAAQS, for any of these counties that are redesignated to attainment by U.S. EPA prior to final adoption of this rule. Until the state rulemaking is effective, these counties will be subject to the state's nonattainment rules, including the permitting rules. Rules included in the maintenance plan for these counties continue to apply to the redesignated area.

### **Scheduled Hearings**

First Public Hearing: October 3, 2007, at 1:00 p.m., at the Indiana Government Center-South,

402 West Washington Street, Conference Center Room B, Indianapolis, Indiana.

Second Public Hearing: February 6, 2008, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as appropriate.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
  - (A) human, plant, animal, or aquatic life; or
  - (B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The new rules are consistent with federal rules.

### **Rulemaking Process**

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The second type of notice is a section 7 notice. A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required. It contains the commissioner's determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a section 8 notice. A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public comment periods are required. It contains the commissioner's determination and

findings, the draft rule and a notice of first meeting/hearing. In each case the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Publisher. This rulemaking was initiated with a section 8 notice.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).